

## **REMARKS**

### **Claim Rejections**

Claims 1-4 and 6-12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Donaldson (U.S. 3,475,264) in view of Davignon et al. (U.S. 5,836,053) and Stehouwer (U.S. 4,407,082). Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over the same references as applied to claims 1-4 and further in view of Patzl (U.S. 6,607,340).

### **Drawings**

It is noted that the Examiner has accepted the drawings as originally filed with this application.

### **Amendments to Specification**

Applicant has amended the specification as noted above to delete the duplicate description of Figure 7. It is believed that the foregoing amendments to the specification overcome the outstanding objections thereto. No "new matter" has been added to the original disclosure by the foregoing amendments to the specification.

### **New Claims**

By this Amendment, Applicant has canceled claims 1, 8, 10 and 12, amended claims 2-3, 6-7, 9 and 11, and added new claim 13 to this application. It is believed that the new and amended claims specifically set forth each element of Applicant's invention in full compliance with 35 U.S.C. § 112, and define subject matter that is patentably distinguishable over the cited prior art, taken individually or in combination.

The new claims are directed toward a fastening strap structure comprising: a strap body (20) made of a plastic material and having a series of stop teeth (21) located on an outer face thereof; and at least one flexible metal reinforcing string (10) embedded in the strap body, wherein each of the at least one flexible metal reinforcing string is a multi-strand cable, each of the at least one flexible metal

reinforcing string and the series of stop teeth extend continuously along a length of the strap body.

The primary reference to Donaldson discloses a reinforced plastic strapping laminate including a glass outer layer (14) located between two plastic layers (13, 15).

On page 3 of the outstanding Office Action, the Examiner admits that Donaldson does not teach "the strap is provided with teeth on the outer surface thereof and the reinforcing member is formed of metal."

Donaldson does not teach each of the at least one flexible metal reinforcing string is a multi-stand cable; nor does Donaldson teach each of the at least one flexible metal reinforcing string and the series of stop teeth extend continuously along a length of the strap body.

The secondary reference to Davignon et al. discloses a cable tie (11) including an elongated strap (13) with a plurality of raised cross-members (25).

Davignon et al. do not teach at least one flexible metal reinforcing string embedded in the strap body; each of the at least one flexible metal reinforcing string is a multi-stand cable; nor do Davignon et al. teach each of the at least one flexible metal reinforcing string and the series of stop teeth extend continuously along a length of the strap body.

The secondary reference to Stehouwer discloses a tag including a body (12) and a tie (14). The tie includes a pair of spaced apart wires (16, 17).

Stehouwer does not teach strap body made of a plastic material and having a series of stop teeth located on an outer face thereof; each of the at least one flexible metal reinforcing string is a multi-stand cable; nor does Stehouwer teach each of the at least one flexible metal reinforcing string and the series of stop teeth extend continuously along a length of the strap body.

The secondary reference to Patzl et al. discloses a removable ice screw securing device including an elongated tube (12) having a thread (36).

Patzl et al. do not teach at least one flexible metal reinforcing string embedded in the strap body; each of the at least one flexible metal reinforcing string is a multi-stand cable; nor do Patzl et al. teach each of the at least one flexible metal

reinforcing string and the series of stop teeth extend continuously along a length of the strap body.

Even if the teachings of Donaldson, Davignon et al., Stehouwer, and Patzl et al. were combined, as suggested by the Examiner, the resultant combination does not suggest: each of the at least one flexible metal reinforcing string is a multi-stand cable; nor does the combination suggest each of the at least one flexible metal reinforcing string and the series of stop teeth extend continuously along a length of the strap body.

It is a basic principle of U.S. patent law that it is improper to arbitrarily pick and choose prior art patents and combine selected portions of the selected patents on the basis of Applicant's disclosure to create a hypothetical combination which allegedly renders a claim obvious, unless there is some direction in the selected prior art patents to combine the selected teachings in a manner so as to negate the patentability of the claimed subject matter. This principle was enunciated over 40 years ago by the Court of Customs and Patent Appeals in In re Rothermel and Waddell, 125 USPQ 328 (CCPA 1960) wherein the court stated, at page 331:

The examiner and the board in rejecting the appealed claims did so by what appears to us to be a piecemeal reconstruction of the prior art patents in the light of appellants' disclosure. ... It is easy now to attribute to this prior art the knowledge which was first made available by appellants and then to assume that it would have been obvious to one having the ordinary skill in the art to make these suggested reconstructions. While such a reconstruction of the art may be an alluring way to rationalize a rejection of the claims, it is not the type of rejection which the statute authorizes.

The same conclusion was later reached by the Court of Appeals for the Federal Circuit in Orthopedic Equipment Company Inc. v. United States, 217 USPQ 193 (Fed.Cir. 1983). In that decision, the court stated, at page 199:

As has been previously explained, the available art shows each of the elements of the claims in suit. Armed with this information, would it then be non-obvious to this person of ordinary skill in the art to

coordinate these elements in the same manner as the claims in suit? The difficulty which attaches to all honest attempts to answer this question can be attributed to the strong temptation to rely on hindsight while undertaking this evaluation. It is wrong to use the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when resolving the question of non-obviousness in a court of law.

In In re Geiger, 2 USPQ2d, 1276 (Fed.Cir. 1987) the court stated, at page 1278:

We agree with appellant that the PTO has failed to establish a *prima facie* case of obviousness. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination.

Applicant submits that there is not the slightest suggestion in either Donaldson, Davignon et al., Stehouwer, or Patzl et al. that their respective teachings may be combined as suggested by the Examiner. Case law is clear that, absent any such teaching or suggestion in the prior art, such a combination cannot be made under 35 U.S.C. § 103.

Neither Donaldson, Davignon et al., Stehouwer, nor Patzl et al. disclose, or suggest a modification of their specifically disclosed structures that would lead one having ordinary skill in the art to arrive at Applicant's claimed structure. Applicant hereby respectfully submits that no combination of the cited prior art renders obvious Applicant's new and amended claims.

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**Summary**

In view of the foregoing amendments and remarks, Applicant submits that this application is now in condition for allowance and such action is respectfully requested. Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

Date: October 27, 2004

By:

  
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